IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 2ND MAY 2007 / 12TH VAISAKHA 1929

Crl.MC.No. 1438 of 2007()

CMP.1372/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, THAMARASSERY
C.C.130/2001 OF JUDL.MAGISTRATE OF FIRST CLASS-II, THAMARASSERY

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PETITIONER: ACCUSED:

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1. M.P. MUSTHAFA, S/O. ABU,
   PULIKKAL HOUSE, ARECODE.

2. K.K. PAKRU,
   KARUVADAN KUNNATH, CHERUVADI P.O.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT/STATE:

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1. FOOR INSPECTOR, KUNNAMANGALAM.

2. STATE, REP. BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY GOVERNMENT PLEADER, SRI C.K.SURESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

Criminal M. C. No.1438 of 2007

Dated this the 2nd day of May, 2007

O R D E R

Heard both sides. The petitioners who are the accused persons, are the salesman and the licensee of a shop, from whom the Food Inspector, Kunnamangalam, had purchased an item of food called Diamond Beeda Supari. The petitioners were prosecuted by the Food Inspector for an offence punishable under Section 16(1-A) read with Section 7 (1) of the Prevention of Food Adulteration Act, 1954. During the course of trial, a bill, which was claimed as a warranty within the meaning of Section 19(2) of the Act, was sought to be marked in evidence. Consequent on objection raised by the prosecution, marking of the said document was refused. Thereafter, the petitioners filed an application to receive the said document in evidence. The reception of the said

document was opposed, and the Judicial Magistrate of the First Class-II, Thamarassery, as per order, dated 26/04/2007, in CM.P.No.1372/2007 in C.C.No.130/2001, dismissed the said application. It is the said order which is assailed in this petition.

2. After hearing both sides, I am of the view that the total shutting out of the evidence was not called for. The document, which is the bill, allegedly containing the warranty within the meaning of Section 19(2) of the Act, could have been considered and its evidenciary value assessed by the Magistrate.

3. Accordingly, the aforesaid order is set aside and the Magistrate is directed to dispose of C.C.No.130/2001, after considering the bill, which was sought to be produced by the petitioners. It is needless to say that the probative value of the bill may depend on the fact whether it was, infact issued by the manufacturer while supplying the goods to the

second accused, and whether it was issued from proper custody.

This Crl.M.C is accordingly, allowed with the above observations.

(V.RAMKUMAR)
JUDGE

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